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No. 82-1579

IN THE

Supreme Court of the United States

October Term, 1983

HAYFIELD NORTHERN RAILROAD COMPANY, INC.,

Appellant,

and

STATE OF MINNESOTA,

Appellant/Intervenor,

v.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

Appellee.

On Appeal From the United States Court of Appeals for the Eighth Circuit

BRIEF FOR APPELLEE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

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QUESTIONS PRESENTED

The questions presented are:

1. Whether 49 U.S.C. §10905 preempts Minnesota condemnation law when a Minnesota railroad company attempts to condemn the track and right of way of a properly abandoned rail line in order to continue rail service on that line.

2. Whether Hayfield Northern Railroad Company, Inc.'s use of a state court injunction to prevent Appellee's removal of its rail assets and contemplated action to condemn the subject track and right of way constitute impermissible collateral attacks on the orders and decisions of the Interstate Commerce Commission.

Rule 28.1 list of Appellee's parent companies, subsidiaries and affiliates:

Des Moines and Central Iowa Railway Company (subsidiary)

Fort Dodge, Des Moines & Southern Railway Company (subsidiary)

Trailer Train Company (affiliate)

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BRIEF FOR APPELLEE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

OPINION BELOW

The opinion of the court of appeals affirming the order of the district court is reported at 693 F.2d 819, and appears as Appendix A to Appellants' Jurisdictional Statement (J.S. App. A1-A11). The order of the district court

granting Appellee's motion for summary judgment and dismissing the complaint is not reported, and appears as Appendix C to Appellants' Jurisdictional Statement (J.S. App. A13-A16).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional provisions, Article I, Section 8, Clause 3 and Article VI, Clause 2 of the United States Constitution, are set forth in the Motion to Affirm, at 2, and in the Joint Brief of Appellants, at 3.

The relevant statutory provisions are reproduced in the Appendix to Appellants' Jurisdictional Statement. 49 U.S.C. §10903 (Supp. V) appears therein as Appendix G (J.S. App. A25-A26), and 49 U.S.C. §10905 (Supp. V) appears therein as Appendix F (J.S. App. A20-A24).

Minn. Stat. §222.27 (1982) and Minn. Stat. §300.04 (1982) are set forth in Appellants' Jurisdictional Statement (J.S. 2 and 3, respectively), and in the Joint Brief of Appellants (at 2, 2-3, respectively).

STATEMENT OF THE CASE

Introduction

This is an appeal from a decision of the United States Court of Appeals for the Eighth Circuit affirming the order of the United States District Court for the District of Minnesota which dismissed an adversary proceeding instituted by Hayfield Northern Railroad Company, Inc. (hereinafter "Hayfield Northern") against Chicago and North Western Transportation Company (hereinafter "C&NW") on the ground that 49 U.S.C. §10905 (Supp.

V) preempts Minnesota condemnation law when a Minnesota railroad company attempts to condemn the track and right of way of a properly abandoned rail line in order to continue rail service on that line.

Proceedings Below

On January 30, 1981, C&NW filed an application with the Interstate Commerce Commission (hereinafter the "Commission"), pursuant to 49 U.S.C. §10903 (Supp. V)[1] of the Interstate Commerce Act, for a certificate of abandonment of its railroad line between Oelwein, Iowa and Randolph, Minnesota.[2] Several shippers from southern Minnesota (hereinafter the "Shippers Group") opposed the abandonment of a 19.2-mile segment of the line between Dodge Center and Sargeant, Minnesota, and between Hayfield and Waltham, Minnesota (hereinafter the "Hayfield segment").

The Administrative Law Judge (hereinafter the "ALJ") found that the public convenience and necessity permitted abandonment of the entire line.[3] One of the factors the ALJ weighed in determining that continued operation of the line would impose an undue burden on C&NW and on interstate commerce was the "opportunity cost"[4]

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[1]We will hereinafter omit "(Supp. V)" in references to the current version of the Interstate Commerce Act.

[2]See *Chicago & N.W. Transp. Co.-Abandonment Between Oelwein, Ia. and Randolph, Mn.*, I.C.C. Docket No. AB-1 (Sub-No. 113F) (1981), *petition for review dismissed sub nom. Brownsdale Cooperative Ass'n v. Interstate Commerce Commission*, No. 81-2333 (8th Cir. Jan. 14, 1982).

[3]*Id.* The ALJ's decision was decided July 10, 1981 and served July 15, 1981. (Joint Lodging ("J.L.") 23). Administrative and judicial decisions in the abandonment proceedings which have not been printed in the parties' appendices are reproduced in the Joint Lodging.

[4]Opportunity cost has been defined as the income that a carrier forfeits by continuing to devote capital assets to an unproductive line when alternative use of those assets could be turned to economic gain. *Id.* (J.A.21; J.L.18, 19). See *Texas & Pac. Ry. Co. Abandonment*, 363 I.C.C. 666, 671 (1980).

to C&NW. *Id.* (Joint Appendix ("J.A.") 22; J.L. 19, 21). Contemporaneus with the ALJ's decision, which was administratively final, the findings were published in the Federal Register[4] on July 15, 1981, which among other things, required that if continued rail service was contemplated by any person, certain procedures must be undertaken in accordance with 49 C.F.R. §1121.38 (1981).

Thereafter, the Shippers Group, pursuant to 49 U.S.C. §10905, submitted an offer of financial assistance[5] to subsidize operation of the Hayfield segment of the line. The Commission found the Shippers Group to be financially responsible persons within the meaning of 49 U.S.C. §10905. (Mot. to Aff. App. A19-A20). When the Shippers Group and C&NW could not agree on subsidy terms, the Shippers Group requested that the Commission, pursuant to Section 10905(e), establish the conditions and amount of subsidy. As a part of the Commission's determination of the subsidy amount, the Commission found the net liquidation value of the Hayfield segment to be $1,791,354[7]. Soon thereafter, the Shippers Group filed an administrative appeal of the ALJ's decision authorizing abandonment (J.L. 39-55), which appeal was denied by the Commission (J.L. 64).

Shortly after the Commission announced its findings on net liquidation value and subsidy, the Shippers Group

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[4]46 Fed. Reg. 36,763 (No. 135) (1981) (Mot. to Aff. App. A1-A3).

[5]The Shippers Group's offer of financial assistance (Mot. to Aff. App. A4-A17) was made pursuant to 49 C.F.R. §1121.38 (1981).

[7]Mot. to Aff. App. A25-A26, A32. It was necessary to determine net liquidation value before the subsidy amount could be calculated. The subsidy should equal "the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line. . . ." 49 U.S.C. §10905(d)(2)(A). One element of the "value of the line" is the net liquidation value of the rail properties on the line. 49 C.F.R. §1121.44(c) (1981).

withdrew its offer of financial assistance on the Hayfield segment of the line (Mot. to Aff. App. A33-A34), and filed an appeal in the United States Court of Appeals for the Eighth Circuit seeking a reversal of the ALJ's decision authorizing abandonment.[8] The Shippers Group did not appeal the Commission's determination of net liquidation value or subsidy amount.

In early January, 1982, after unsuccessfully seeking a stay of the order authorizing abandonment,[9] the Shippers Group withdrew its appeal in the court of appeals of the substantive decision authorizing abandonment.[10]

In reliance on the finality of the administrative proceedings and the absence of any offers to purchase or subsidize the Hayfield segment of line for continued rail operation, C&NW entered into various contracts with the State of Iowa and certain Iowa shippers involving substantial upgrading of trackage in Iowa. C&NW planned to salvage and utilize the rail from the Hayfield segment of the line to apply to these projects. (J.S. App. A3).

On March 31, 1982, approximately three months after the substantive appeal was dismissed, and approximately six months after the Commission's determination of net liquidation value and subsidy amount, members of the Shippers Group formed the Hayfield Northern Railroad

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[8]See *Brownsdale Cooperative Ass'n v. Interstate Commerce Commission*, No. 81-2333 (8th Cir. filed Dec. 7, 1981) (J.L. 66-78).

[9]The Commission denied the Shippers Group's petition to stay the effective date of the abandonment certificate by decision dated December 14, 1981 (J.L.80). The Commission rejected the Shippers Group's contention that grant of the stay would not harm C&NW, stating "CNW is operating a marginal line and is incurring substantial opportunity cost and a grant of this stay would cause [C&NW] to continue to incur this cost." (J.A.33; J.L.80). See also J.A.33-J.A.34.

[10]*Id.* Judgment of dismissal was entered January 14, 1982. (J.A. 35-J.A.36).

Company, Inc., which, under Minnesota law,[11] possessed condemnation powers to acquire property for railroad purposes. On the same day, Hayfield Northern filed suit in the Dodge County (Minnesota) District Court, alleging that it desired to condemn the track, appurtenances and right of way on the Hayfield segment of the line and seeking a temporary restraining order preventing C&NW's removal of rail, ties and facilities from the segment of line. (J.A.1-J.A.3). The state court granted Hayfield Northern's motion for a temporary restraining order. (J.A.3-J.A.5).

C&NW removed the suit to the United States District Court for the District of Minnesota[12] (J.A.5-J.A.9), and the State of Minnesota intervened to defend the constitutionality of its condemnation statute as applied (J.A.15-J.A.16). The district court[13] granted C&NW's motion for summary judgment, dissolved the temporary restraining order, and dismissed Hayfield Northern's complaint with prejudice, holding that, on the facts presented, 49 U.S.C. §10905 preempts state condemnation procedures. (J.S. App. A13-A16).

Hayfield Northern appealed the district court's order[14] (J.A.16-J.A.17) and moved for a stay pending appeal and for an expedited appeal. After argument, the court of appeals granted Hayfield Northern's motions upon the posting of a $100,000 bond. (J.A.17-J.A.18).

On December 3, 1982, the court of appeals affirmed the judgment of the district court (J.S. App. A1-A11),

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[11]Minn. Stat. §222.27 (1982); Minn. Stat. §300.04 (1982).
[12]Jurisdiction was based on diversity of citizenship.
[13]The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.
[14]The jurisdiction of the United States Court of Appeals for the Eighth Circuit was invoked pursuant to 28 U.S.C. §1291.

concluding that "49 U.S.C. §10905 (Supp. IV 1980) preempts Minnesota condemnation law when a Minnesota railroad company attempts to condemn the track and right of way of a properly abandoned rail line in order to continue rail service on that line." (J.S. App. A1-A2).

Appellants' joint petitions for rehearing and rehearing en banc were denied by the court of appeals on January 18, 1983. (J.S. App. A16-A17). On February 9, 1983, the court of appeals denied Appellants' joint petition to stay the issuance of mandate pending appellate proceedings to this Court. (J.S. App. A26). On February 10, 1983, Appellants' joint application for stay of the court of appeals' mandate was denied by Circuit Justice Harry A. Blackmun of this Court. (J.S. App. A27). On February 22, 1983, Justice Rehnquist denied Appellants' renewed application for a stay of the court of appeals' mandate (J.S. App. A28), after receiving the amicus curiae memorandum of the Solicitor General setting forth the view of the United States (J.S. App. A30-A31). On March 7, 1983, this Court denied Appellants' renewed application for a stay of the court of appeals' mandate. (J.S. App. A29). Probable jurisdiction was noted on October 3, 1983.

The Staggers Rail Act

The legislative history and structure of the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, *et seq.* (hereinafter the "Staggers Rail Act"), is selectively set out in the Government's brief. Brief at 4-5, 18-24. The Interstate Commerce Act (see Act of Feb. 4, 1887, ch. 104, 24 Stat. 379) is widely recognized as being among the most pervasive and comprehensive of federal regulatory schemes. *Chicago & N.W. Transp. Co. v. Kalo Brick &*

Tile Co., 450 U.S. 311, 318 (1981). The 1887 Act did not subject railroad abandonments to the jurisdiction of the Commission. The Commission's authority over abandonments was established by the Transportation Act of 1920, ch. 91, 41 Stat. 456, 49 U.S.C. §1(18)-(22) (1925 ed.). See *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, *supra*, 450 U.S. at 319-320. The Commission's authority over abandonments represented Congress' effort to ensure that "interstate commerce [was protected] from undue burdens" that could be imposed by conflicting state regulations concerning the continuation or discontinuation of rail service. *Colorado v. United States*, 271 U.S. 153, 162 (1926). Since the Transportation Act of 1920, no rail carrier has been permitted to abandon a line unless it first obtains a certificate from the Commission that the present or future public convenience and necessity permit such an abandonment. See 49 U.S.C. §10903(a).

The abandonment provisions of the Transportation Act of 1920 remained substantially unchanged until the 1970s, when the economic decline of the nation's rail industry necessitated the participation of the federal government to ensure the continuation of vital service and to restore the rail industry to a level of financial health sufficient to meet future needs for investment capital. See, e.g., H.R. Rep. No. 1482, 95th Cong., 2d Sess. 5-11, *reprinted in* 1978 U.S. Code Cong. & Ad. News 7505; S. Rep. No. 499, 94th Cong., 1st Sess. 2-8, 39-44 (1975), *reprinted in* 1976 U.S. Code Cong. & Ad. News 14. See also *Simmons v. Interstate Commerce Commission*, 697 F.2d 326, 328 (D.C. Cir. 1982). The financial disaster suffered by the Penn Central Transportation Co. and other northeastern railroads in the early 1970s made Congress

aware of the part played by the forced continuation of excessive and uneconomical lines of railroad. *In re Penn Central Transp. Co.*, 382 F. Supp. 831, 836-837 (E.D. Pa. 1974); *Chicago & N.W. Transp Co. v. United States*, 582 F.2d 1043, 1045 (7th Cir. 1978).[15]

Congress was also aware that there were approximately 22,500 miles of uneconomical branch lines throughout the country and that these unprofitable lines cost the nation's railroads over $140 million annually. S. Rep. No. 499, 94th Cong., 1st Sess. 39-44 (1975). The Senate Committee on Commerce reported that "[t]he railroad industry has been unable to adjust to changing market conditions because its facilities are fixed in place, because the regulatory climate constrained management's ability to merge facilities and abandon obsolete properties and lines . . ." *Id.* at 3. Congress concluded that "the railroad industry should not be forced to continue to internalize all losses from unnecessary branch lines, further jeopardizing the industry's already precarious economic health." S. Rep. No. 499, 94th Cong., 1st Sess. 44 (1975), *reprinted in* 1976 U.S. Code Cong. & Ad. News 58.

The Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976, Pub L. No. 94-210, §§802, 809(c), 90 Stat. 31 et seq., originally codified at 49 U.S.C. §1a (1976 ed.) (hereinafter the "4-R Act") with the overriding objective of redeveloping the nation's railroad system through reform of the economic regulatory system. Included in the 4-R Act was a detailed framework to govern the abandonment of lines and discontinuance of service. Although the congressional focus was primarily upon the

[15]See generally *Hearings on Railroad Amendments of 1976 Before the Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce*, 94th Cong., 2d Sess. 158-162 (1976).

abandonment problem, Congress recognized discontinuance of service as part of the same problem and treated it like abandonment in the statute. *Chicago & N.W. Transp. Co. v. United States, supra,* 582 F.2d at 1046.

The 4-R Act repealed the abandonment provisions in former §1(18)-(22) of the Interstate Commerce Act and provided a new abandonment and discontinuance procedure in new §1a. The Commission would first determine whether a proposed abandonment or discontinuance of service would be in the public interest. Upon a determination that it was, the Commission would issue a certificate of abandonment unless it found that a financially responsible party had made an offer of financial assistance to enable the rail service to continue via purchase or subsidy. If such an offer was made, the parties were required to negotiate for a period not to exceed six months, but if no rail continuation subsidy or purchase was successfully negotiated the Commission was required to issue a certificate of abandonment.[18] See generally *Chicago & N.W. Transp. Co. v. United States, supra,* 582 F.2d at 1046, 1049.

The 4-R Act provided for advance notice to the public of the lines the nation's rail carriers intended to abandon. Section 1a(2). Section 1a(5) required each carrier to publish and maintain system diagram maps to show the lines for which the carriers planned to submit abandonment applications. A rail carrier was required to post, publish and serve notice to the public of its intent to file an aban-

[18]Unlike the provisions of the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 986 (codified, as amended, at 45 U.S.C. §701 *et seq.*) (hereinafter the "3-R Act"), applicable only to the northeastern railroads, the 4-R Act did not require rail service continuation either by compulsory sale or subsidy. It imposed compulsory negotiation rather than compulsory sale or subsidy.

donment application thirty days in advance of filing its abandonment application. Rail carriers which had filed abandonment applications were also required to promptly provide, to any party considering offering financial assistance, necessary data to determine the amount of assistance that would be required to continue rail service. Section 1a(6).

Notwithstanding the regulatory reforms made in the 4-R Act, including the improvements made to the abandonment process, the financial health of the railroad industry continued to decline following the passage of the 4-R Act. H.R. Rep. No. 1035, 96th Cong., 2d Sess. 38, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3978, 3983. Congress found, *inter alia*, that rail industry earnings were the lowest of any transportation mode and were insufficient to generate funds for necessary capital improvements. H.R. Rep. No. 1035, 96th Cong., 2d Sess. 53, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3978, 3998. By 1985, the rail industry would experience a $16 to $20 billion capital shortfall. H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 3, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3978, 4110, 4111.

The rail industry's inadequate financial performance had led to nearly $4 billion in deferred maintenance. 126 Cong. Rec. 7272 (1980); S. Rep. No. 470, 96th Cong., 1st Sess. 3 (1979). Congress observed that many railroads were caught in a vicious cycle. Depressed earnings had deprived railroads of the ability to make improvements which were in part needed to reduce costs and improve service. S. Rep. No. 470, 96th Cong., 1st Sess. 3 (1979).

In 1980, Congress passed the Staggers Rail Act, which radically changed many of the provisions of the then exist-

ing Interstate Commerce Act, and insofar as is relevant here, substantially modified the abandonment process.

By enacting the rail service continuation provisions of Section 10905 of the Staggers Rail Act, Congress intended to "assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process." H.R. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 125, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3978, 4110, 4157.

Under Section 10905, any arrangements for continued rail service via purchase or subsidy are to be completed within 110 days. If the Commission decides to authorize abandonment under Section 10903, its finding is published concurrently in the Federal Register. 49 U.S.C. §10905 (c). The Federal Register notice states that any offers of financial assistance either to subsidize or to purchase the line must be made within 10 days following publication. 49 U.S.C. §10905(c). If the Commission determines within fifteen days of publication that the offeror is financially responsible and that the amount of the offer is adequate, issuance of the certificate of abandonment is postponed pending negotiations between the parties. 49 U.S.C. §10905 (d). If the parties fail to agree on the subsidy or purchase terms within thirty days after the offer is made, the certificate of abandonment is issued unless either party requests that the Commission establish the conditions and amount of compensation (49 U.S.C. §10905(e)), including the price and terms of any offer to purchase which "has been made in order to continue rail service on the line" (49 U.S.C. §10905(f)(1)(C)). If such a request is

made, the Commission must establish the terms of purchase or subsidy within sixty days. 49 U.S.C. §10905(f)(1)(A). The Commission's determination of purchase or subsidy amount as a quasi-condemnation tribunal[17] is binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within ten days of the Commission's decision without incurring financial obligation. 49 U.S.C. §10905(f)(2). Thus, under Section 10905, any arrangements for the continued rail service via purchase or subsidy must be completed within the 110 day period set by Congress.

A purchaser of a rail line under Section 10905 may not transfer or discontinue service on the line for two years after the sale and may not transfer the line to anyone other than the carrier from whom it was purchased for five years after the sale. 49 U.S.C. §10905(f)(4). Section 10905(f)(4) stiffens the abandonment requirements for these purchasers and requires service for a minimum two year period.[18] Thus, the process prescribed by Congress protects the general public from unsound operators and from further instability in the transportation network.

In enacting the Staggers Rail Act, Congress provided not only for the forced acquisition of a rail line in connection with an abandonment authorization (Section 10905), but also provided that financially responsible parties could forcibly acquire rail lines prior to a carrier's filing of an

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[17]The Commission has acknowledged that it acts as a quasi-condemnation tribunal as a result of the new procedures established by the Staggers Rail Act. See *Chicago & N.W. Transp. Co. - Abandonment - Between Clintonville and Eland, Wisc.*, AB-1 (Sub-No. 104), 363 I.C.C. 975, 977 (1981).

[18]Normally, a rail carrier may seek to abandon a line after the line has been placed in Category 1 on its system diagram map for four months. See 49 U.S.C. §10904(e)(3).

abandonment application (Section 10910). The purpose of Section 10910 is to provide shipper groups and governmental bodies with an alternative to inadequate rail service or abandonment. Ex Parte 395 (Sub-No. 1), *Feeder Railroad Development Program*, 365 I.C.C. 93 (1981). See also H.R. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 124, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3978, 4110, 4156.

Under Section 10910, the Commission can require a carrier to sell a rail line to a financially responsible person if (1) the line appears in Category 1 or 2 of the owning carrier's system diagram map, or (2) the public convenience and necessity, as defined in 49 U.S.C. §10910(c)(1), permit or require the sale of the line. *Feeder Railroad Development Program, supra*, 365 I.C.C. at 93. Section 10910 provides for the determination of net liquidation value by the Commission as a quasi-condemnation tribunal similar to Section 10905. The carrier may be required by the Commission to sell the rail line to a financially responsible person at a price not less than the "constitutional minimum value" (49 U.S.C. §10910(b)(1)), which the statute presumes to be not less than the net liquidation value or the going concern value of the line, whichever is greater. 49 U.S.C. §10910(b)(2). A purchaser of a rail line under Section 10910 must be able to assure adequate transportation over the line for at least three years. (49 U.S.C. §10910(a)(1)(B). Compare with 49 U.S.C. §10905(f)(4)).

In the context of the history and structure of the Staggers Rail Act, Section 10905 represents the exclusive means of forcibly acquiring an intact rail line and right of way in order to continue rail service in connection with federal abandonment proceedings.

SUMMARY OF ARGUMENT

I. The courts below correctly concluded that, on the facts presented, 49 U.S.C. §10905 preempts Minnesota condemnation law when a Minnesota railroad company attempts to condemn the track and right of way of a properly abandoned rail line in order to continue rail service on that line. In enacting the Staggers Rail Act, Congress granted the Commission exclusive and plenary authority to provide for continuation of rail service by subsidy or purchase in connection with rail line abandonments. The history and structure of the Staggers Rail Act demonstrate that, in connection with abandonment proceedings, Section 10905 represents the exclusive means of forcibly acquiring an abandoned rail line and right of way in order to continue rail service on that line. Hayfield Northern had at its disposal, and its principals and incorporators resorted to, the federal statutory mechanism afforded by Section 10905 by which to acquire the Hayfield segment, by purchase or subsidy, in order to continue rail service.

In the context of the history and structure of the Staggers Rail Act, the invocation of Minnesota condemnation law authorizing Hayfield Northern to condemn C&NW's abandoned rail line for continuing rail purposes stands as an obstacle to the accomplishment of the full purposes and objectives of Congress, and is thus preempted. The pervasiveness of the Staggers Rail Act impels the inference that Congress left no room for the states to grant railroad corporations the power to condemn the track and right of way of a properly abandoned rail line for continuing rail purposes.

II. The Interstate Commerce Commission, at the

request of the Shippers Group (which later formed and incorporated Appellant Hayfield Northern), determined the fair market value of the Hayfield segment. The Commission's determination of value was not appealed by the Shippers Group. The court of appeals correctly concluded that there is no reason to allow the Shippers Group, acting through Hayfield Northern, to force C&NW to relitigate the question of value in a state court when Congress has provided an expedited method by which the purchase price of the Hayfield segment may be determined, especially when one determination of that value has already been made by the Commission.

The Commission authorized C&NW's removal of the rail assets on the Hayfield segment. This decision was likewise not appealed by the Shippers Group.

The sole method for enjoining or attacking a final order of the Commission is by appeal to the appropriate federal court of appeals pursuant to 28 U.S.C. §2321(a). The ultimate effect of Hayfield Northern's action is to require C&NW to relitigate the fair market value of the Hayfield segment and to prevent C&NW's removal of the rail assets on the Hayfield segment. Hayfield Northern's contemplated state condemnation action to establish a contrary valuation of the rail assets and use of a state court injunction to prevent C&NW from removing the rail assets constitute impermissible collateral attacks on the unappealed decisions and orders of the Commission.

ARGUMENT

I.

THE INTERSTATE COMMERCE ACT PREEMPTS MINNESOTA CONDEMNATION LAW WHEN A MINNESOTA RAILROAD COMPANY ATTEMPTS TO CONDEMN THE TRACK AND RIGHT OF WAY OF A PROPERLY ABANDONED RAIL LINE IN ORDER TO CONTINUE RAIL SERVICE ON THAT LINE.

Hayfield Northern seeks to acquire C&NW's intact rail line between Dodge Center, Hayfield, Waltham and Sargeant, Minnesota through the exercise of the power granted to Minnesota railroad corporations to condemn property for railroad purposes. Minn. Stat. §222.27 (1982). This contemplated condemnation is in direct conflict with the congressional scheme for abandonment of rail lines and continuation of rail service established by the Staggers Rail Act. That congressional scheme is so pervasive as to impel the inference that Congress left no room for the states to supplement it and that preemption has occurred.

A. The Preemption Doctrine.

Article I, §8, cl. 3 of the United States Constitution (Commerce Clause) provides "[t]he Congress shall have Power . . . [t]o regulate commerce . . . among the several States . . ." It has long been settled law that "there can be no divided authority over interstate commerce, and, . . . the acts of Congress on that subject are supreme and exclusive." *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., supra,* 450 U.S. at 319, quoting *Missouri Pac. R. R. Co. v. Stroud,* 267 U.S. 404, 408 (1925). The plenary power of Congress over interstate commerce by

virtue of the Commerce Clause was recognized by this Court as early as 1824 in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

The preemption doctrine derives from the Supremacy Clause of the United States Constitution (art. VI, cl. 2) which states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . ., any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

A state law is "contrary" to a federal statute, and is thus preempted, if the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141, 153 (1982), quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The determination of a state "obstacle" is a two-step process of "first ascertaining the construction of the two statutes [federal and state] and then determining the constitutional question whether they are in conflict." *Perez v. Campbell*, 402 U.S. 637, 644 (1971).

If a federal statute reveals Congress' intent to foreclose all state legislation on the same subject, the state legislation will be deemed "contrary" to the federal statute, and thus preempted. *Fidelity Federal Savings & Loan Association v. de la Cuesta, supra*, 458 U.S. at 153. Congress' intent to "occupy the field" and thereby foreclose all state law on the same subject may be express, explicitly stated in the statute, or implied, implicitly contained in the statute's structure and purpose. *Id.*, quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).

> Absent explicitly preemptive language, Congress' intent to supercede state law altogether may be inferred because "the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it," because "the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or because "the object sought to be obtained by federal law and the character of obligations imposed by it may reveal the same purpose."

Ibid. (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

Without regard to whether Congress intended to foreclose all state legislation on the same subject, "a state statute is void to the extent that it actually conflicts with a valid statute . . ." *Edgar v. MITE Corp.*, 102 S.Ct. 2629, 2635 (1982). An actual conflict of federal and state statutes may be found either

> when "compliance with both federal and state regulations is a physical impossibility", *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217, 10 L.Ed. 2d 248 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress", *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L. Ed. 581 (1941).

Fidelity Federal Savings & Loan Association v. de la Cuesta, supra, 458 U.S. at 153.

The pervasiveness of the Staggers Rail Act makes reasonable the inference that Congress left no room for the states

to grant railroad corporations the power to condemn the track and right of way of a properly abandoned rail line in order to continue rail service on that line. We turn first to this matter.

B. The Pervasive Federal Scheme of the Interstate Commerce Act.

The Interstate Commerce Act passed in 1887 is widely recognized as being among the most pervasive and comprehensive of federal regulatory schemes. See Act of Feb. 4, 1887, ch. 104, 24 Stat. 379. *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., supra*, 450 U.S. at 318. Beginning with the 1907 decision in *Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907), this Court has frequently invalidated attempts by the states to impose on common carriers obligations that are plainly inconsistent with the plenary authority of the Interstate Commerce Commission or the congressional policy as reflected in the Interstate Commerce Act. *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., supra*, 450 U.S. at 318.

Congress has granted the Interstate Commerce Commission exclusive and plenary authority to regulate abandonments. See Transportation Act of 1920, ch. 91, 41 Stat. 456, 49 U.S.C. §1(18)-(22) (1925 ed.). See also *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., supra*, 450 U.S. at 320-321. Under the current version of the Interstate Commerce Act, no rail carrier may abandon a line unless it first obtains a certificate from the Commission that the present or future public convenience and necessity permit such an abandonment. 49 U.S.C. §10903(a). This Court has held the exclusive and plenary nature of the Commission's authority to rule on

carriers' decisions to abandon lines is critical to the congressional scheme, which contemplated comprehensive administrative regulation of interstate commerce. *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., supra,* 450 U.S. at 320. The court of appeals properly concluded that the elaborate procedural detail of the scheme by which Congress empowered the Commission to determine continuation of service on rail lines by forced sale or subsidy readily indicates that Congress granted the Commission exclusive and plenary authority to regulate continuation of rail service in connection with abandonments. (J.S. App. A7).

The recent statutory changes to the Interstate Commerce Act (*supra* at 9-14) evinces Congress' intent that the Commission have exclusive and plenary authority over the forced disposition of rail lines for continued rail service following an administrative authorization of abandonment. Congress carefully tailored the Staggers Rail Act to make continued rail service via purchase or subsidy an integral part of the federal abandonment process. (J.S. App A6).

Where Congress has provided for the forced sale of a line prior to an abandonment application being filed (49 U.S.C. §10910) and has provided for the forced sale or subsidy of a rail line following the Commission's authorization of abandonment (49 U.S.C. §10905), the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it. *Fidelity Federal Savings & Loan Association v. de la Cuesta, supra,* 458 U.S. at 153; *Rice v. Santa Fe Elevator Corp., supra,* 331 U.S. at 230.

The court of appeals correctly held that the elaborate

procedural detail of the Staggers Rail Act indicates that not only has Congress granted the Commission exclusive and plenary authority to regulate abandonments, *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., supra,* 450 U.S. at 320, Congress also granted the Commission exclusive and plenary authority to provide for continuation of rail service via forced sale or subsidy following its authorization of abandonment. (J.S. App. A7).

C. Minnesota Condemnation Law is an Obstacle to the Accomplishment and Execution of the Purposes and Objectives of Section 10905.

Minn. Stat. §222.27 (1982), which would purport to authorize Hayfield Northern to condemn C&NW's abandoned railroad line for continued rail purposes, stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, and is thus preempted by 49 U.S.C. §10905.

By enacting Section 10905, Congress intended to "assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process." H.R. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 125, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3978, 4110, 4157. The Staggers Rail Act was carefully tailored to accomplish that purpose by providing that the forced disposition of rail lines for continued rail service was an integral part of the federal abandonment process.

To allow Hayfield Northern to use state condemnation proceedings to condemn C&NW's right of way and track for purposes of continued rail use would frustrate the ac-

complishment of Congress' purposes in enacting Section 10905. (J.S. App. A7). The benefits of the 110-day abandonment time schedule set by Congress would be lost, since the state condemnation proceedings, once commenced,[19] could take years, and in the meantime the carrier's assets would stand idle and unproductive.[20]

Moreover, at the end of the state condemnation proceedings, Hayfield Northern could abandon the condemnation action and not pay the award.[21] Although C&NW might recover costs and attorney's fees under Minn. Stat. Ann. §117.195 (West 1977), it could recover consequential damages, if at all, only by bringing a separate law suit. See *State v. Savage*, 255 N.W.2d 32 (Minn. 1977). During the pendency of such condemnation proceedings, burdens on both the carrier and interstate commerce would be imposed by the opportunity cost of the idle and unproductive rail assets. *Texas Pac. Ry. Co. Abandonment*, 363 I.C.C. 666, 671 (1980).

Under Section 10905(e), either the carrier or the offeror may request that the Commission set the terms of the pur-

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[19]Hayfield Northern has not yet filed its condemnation action notwithstanding the commencement of this action on March 31, 1982.

[20]To further complicate matters for the carrier seeking abandonment of a line, not one but several railroad company condemnors could be hastily formed, each seeking to condemn the same or different segments of the abandoned line. This situation arose in an action related to this abandonment. Kenerson Railroad Company, Inc., a Minnesota corporation, was formed in early 1982 by shippers seeking to condemn a 20 mile segment of this abandoned line between Kenyon and Randolph, Minnesota. C&NW was again temporarily enjoined by a Minnesota state court judge from removing its railroad track and appurtenances and from disposing its real estate. See *Kenerson R.R. Co., Inc. v. Chicago & N.W. Transp. Co.*, No. 3-82-608 (D. Minn. filed May 17, 1982), *appeal dismissed*, No. 82-1657 (8th Cir. July 8, 1982).

[21]Under Minnesota law, a condemnor may abandon the condemnation proceeding at any time before the parties' rights have "vested". See *County of Hennepin v. Mikulay*, 292 Minn. 200, 210-13, 194 N.W.2d 259, 265-67 (1972); *State v. Myhra G.M.C. Truck & Equipment Co.*, 254 Minn. 17, 18-19; 93 N.W.2d 204, 205 (1958).

chase or subsidy. The Commission's determination is binding on both parties. 49 U.S.C. §10905(f)(2). If Congress' only purpose in enacting Section 10905 was merely to force the carriers to the bargaining table as Appellants suggest (Brief at 19), there would be no need for Congress to have provided for the carriers' ability to request the Commission to set the conditions and amount of compensation of the purchase or subsidy. See 49 U.S.C. §10905 (e) ("If the carrier and a financially responsible person (including a government authority) fail to agree on the amount or terms of the subsidy or purchase, *either party may*, within 30 days after the offer [of financial assistance] is made, *request that the Commission establish the conditions and amount of compensation.*") (Emphasis added). However, in so doing it is clear the Commission's determination of the conditions and amount of compensation was to protect both the shippers and the carriers to avoid continuing legal proceedings.

In this case, Hayfield Northern has not yet filed its condemnation action a year and a half after obtaining the original state court injunction preventing C&NW's removal of its track and reuse of its property. The scarce reusable rail from the Hayfield segment of line was committed by C&NW to fulfill its contracts with the State of Iowa and Iowa shippers to upgrade grain hauling lines in Iowa. (J.S. App. A3). As a result of the instant litigation, the rail upgrading program has been disrupted and C&NW has been substantially delayed from utilizing its salvageable rail and track materials elsewhere on its system.[22] Hayfield Northern has subjected C&NW to the precise "protracted legal proceedings" which the procedures set forth

[22]C&NW completed the salvage of its line on September 30, 1983.

in Section 10905 were clearly designed to avoid. (J.S. App. A7).

Furthermore, the use of state procedures to condemn intact rail lines following abandonment would defeat a congressional goal of the Staggers Rail Act, to-wit, "to assist the railroads of the nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense." H.R. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 3 (1980).

In *State of Maine, Dep't of Transp. v. Interstate Commerce Commission*, 587 F.2d 541, 543-44 (1st Cir. 1978), the carrier's overall financial health was a factor which was weighed in considering whether rail service should be continued.[23] The court stated that in weighing all the relevant factors in an abandonment, the Commission "could conclude that abandonment would bring about offsetting benefits to the financially pressed railroad, *including the ability to utilize the salvageable rails elsewhere on its line.*" *Id.* (Emphasis added.) See also *In re Boston and Maine Corp.*, 596 F.2d 2 (1st Cir. 1979).

C&NW was prevented from recovering and utilizing its salvageable rail and track materials from the Hayfield segment to upgrade its major grain hauling lines in Iowa as a result of the instant litigation. Rather than productively reusing these scarce rail materials, the track appurtenances and right of way sat idle, contrary to the express intent of Congress.

A year before the passage of the Staggers Rail Act, the Commission explicitly recognized that burdens on inter-

[23] Similarly, C&NW's marginal financial condition was expressly considered in the Commission's determination of C&NW's abandonment application. See J.L. 21.

state commerce not only arise from carrier losses sustained from operating unprofitable lines, but also from the dedication of assets to unnecessary lines which assets could be used profitably elsewhere. Ex Parte 274 (Sub-No. 3), *Abandonment of Railroad Lines-Use of Opportunity Costs*, 44 Fed. Reg. 10,807 (1979); *Abandonment of Railroad Lines-Use of Opportunity Costs*, 360 I.C.C. 571 (1979), *aff'd sub nom. Farmland Industries, Inc. v. United States*, 642 F.2d 208 (7th Cir. 1981).

The Commission defined "opportunity cost" as the income that a carrier forfeits by continuing to devote capital assets to a line when alternative use of those assets could be turned to economic gain. *Texas & Pac. Ry. Co. Abandonment*, 363 I.C.C. 666, 671 (1980). The opportunity costs are developed by multiplying an "adequate" rate of return by the net liquidation value of the rail line.[24] *Texas & Pac. Ry. Co. Abandonment*, 363 I.C.C. 666, 671 (1980); Ex Parte 274 (Sub-No. 3B), *Abandonment of Railroad Lines-Use of Opportunity Costs*, 367 I.C.C. 734 (1983).

In *Abandonment of Railroad Lines-Use of Opportunity Costs, supra*, 360 I.C.C. at 577, the Commission concluded:

> [W]e find that opportunity costs must be a factor used in determining whether the public convenience and necessity permits abandonment. This finding reflects our belief that opportunity costs are a real, and in some cases, very significant factor in determining whether the line at issue is imposing a burden on interstate commerce . . . Such evidence may

[24]An "adequate" rate of return is computed by using the findings in the Commission's annual revenue adequacy proceeding adjusted for taxes and inflation. *Id.*

include the costs incurred in keeping assets tied up in less profitable operations as opposed to more profitable uses elsewhere, including nonrail uses.

* * *

We believe that in the abandonment areas we must look ultimately to how productively assets are used. Lines consisting of valuable assets which are underutilized should be allowed to be abandoned *so that those assets may be better used elsewhere.* (Emphasis added).

Under Section 10903 of the Staggers Rail Act, the Commission determines whether the present or future public convenience and necessity permit an abandonment given the respective burdens of the railroad and shippers. The Commission determines whether there are losses incurred by the carrier from operating the line. See 49 C.F.R. §1152.32 (1981). In addition, it determines what income, if any, a carrier forfeits by continuing to devote capital assets to the line when alternative use of those assets could be turned to economic gain. *Texas & Pac. Ry. Co. Abandonment*, 363 I.C.C. 666, 671 (1980). These "opportunity costs" are considered in all abandonment cases in determining whether there is an undue burden on the carrier and on interstate commerce, and whether, therefore, public convenience and necessity permit abandonment. *Id.* See, e.g., J.L.19. Once an abandonment certificate is issued, if a carrier is not able to promptly and productively reuse its capital assets, the Commission's decision authorizing abandonment is unquestionably undermined.

In *Texas & Pac. Ry. Co. Abandonment*, 363 I.C.C. 666, 676 (1980), the Commission recognized that

> [w]hen reusable rail assets are tied up on a line where they are barely used, there is a burden on interstate commerce. That burden is a very real one when, as today, there is a nationwide need for actual rail materials and the funds to purchase rail materials. Thus, the public is harmed by the under-utilization of scarce resources. When, under circumstances such as those shown here, 112-pound rail in good condition is left on a line over which little traffic is moved, we find a significant burden on interstate commerce.

This Court in *Colorado v. United States, supra,* 271 U.S. at 162-163, recognized that "the certificate of abandonment issues not primarily to protect the railroad, but to protect interstate commerce from undue burdens . . . Expenditures in the local interest may be so large as to compel the carrier to raise reasonable rates, or to abstain from making an appropriate reduction of such rates, or to curtail interstate service, or to forego facilities needed in interstate commerce." The ability of Hayfield Northern to prevent C&NW from productively reusing its assets—which the Commission explicitly found were needed elsewhere on C&NW's system (see J.L. 21)—by resort to a state court injunction obstructs the accomplishment and execution of the full purposes and objectives of Congress in enacting the Staggers Rail Act. *Fidelity Federal Savings & Loan Association v. de la Cuesta, supra,* 458 U.S. at 153; *Hines v. Davidowitz, supra,* 312 U.S. at 67. Accordingly, the Staggers Rail Act preempts Minnesota condemnation law on the facts of this case.

II.

HAYFIELD NORTHERN'S USE OF A STATE COURT INJUNCTION TO PREVENT C&NW'S REMOVAL OF ITS ASSETS AND CONTEMPLATED ACTION TO CONDEMN THE HAYFIELD SEGMENT CONSTITUTE IMPERMISSIBLE COLLATERAL ATTACKS ON THE COMMISSION'S ORDERS AND DECISIONS.

The court of appeals correctly concluded that there is no reason to allow the Shippers Group, acting through Hayfield Northern, to force C&NW to relitigate the question of value in a state court when Congress has provided an expedited method by which the purchase price of the Hayfield segment may be determined, especially when one determination of that value has already been made.[25] (J.S. App. A8).

The Commission's jurisdiction under Section 10905(f) to establish the amount of compensation was invoked by the principals of Hayfield Northern. In an unappealed Commission order, the Commission determined the fair market value of the subject line was $1,791,354. (Mot. to Aff. App. A32). The Shippers Group had the right to appeal the Commission's valuation if it disagreed with the price (see 28 U.S.C. §§2321(a), 2342), but it chose not to appeal the order.

While persons offering to purchase or subsidize a line may "walk away" from the conditions and compensation established by the Commission without incurring financial liability, pursuant to Section 10905(f), the statutory lan-

[25]At least one court has held that the Section 10905 procedure for the determination of the purchase price of a rail line sought to be abandoned is constitutionally adequate. See *Chicago & N.W. Transp. Co. v. United States*, 678 F.2d 665, 671 (7th Cir. 1982).

guage indicates that the Commission's determination of fair market value or subsidy is "binding" on the parties. 49 U.S.C. §10905(f)(2). The Commission itself has held that:

> A party's only remedy if dissatisfied with our decision [on value or subsidy] is to seek judicial review in a United States Court of Appeals pursuant to 28 U.S.C. 2321(a) and 2342. Under these sections, the court of appeals has exclusive jurisdiction to review, enjoin, set aside or determine the validity of all of our final orders.

Ex Parte 274 (Sub-No. 6), *Abandonment of Railroad Lines and Discontinuance of Service*, 365 I.C.C. 249, 261 (1981).

If the Commission establishes the conditions of purchase or subsidy and the original offer of financial assistance is withdrawn pursuant to Section 10905(f)(2), any other offeror may accept the Commission's conditions of purchase or subsidy not later than 20 days after the date of the decision. 49 U.S.C. §10905(f)(3). The Commission will require the carrier to enter into the purchase or subsidy agreement with the subsequent offeror on the same conditions as previously established by the Commission. *Id.* The Commission's determination of value and conditions for the Section 10905 purchase or subsidy remains binding on the parties regardless of whether the original offeror withdraws its offer. If the parties fail to appeal the Commission's determination of value, it follows that they are prohibited from relitigating that valuation in state court.

Hayfield Northern's contemplated condemnation action in an effort to obtain an independent determination of

value in state court is squarely an impermissible collateral attack on the Commission's unappealed order. Ex Parte 274 (Sub-No. 6), *Abandonment of Railroad Lines and Discontinuance of Service*, 365 I.C.C. 249, 261 (1981). C.f. *Chicago and N.W. Transp. Co. v. Kalo Brick & Tile Co., supra; Village of Mantorville v. Chicago, Great Western R. Co.*, 8 F. Supp. 791 (D. Minn. 1934).

Similarly, Hayfield Northern's use of a state court injunction to prevent C&NW from removing its track and appurtenances and selling its right of way on the Hayfield segment of line was an impermissible attack on the Commission's orders in this case.

In the Commission's certificate and decision dated October 7, 1983, C&NW was explicitly authorized to remove its tracks and appurtenances from the subject line. (J.A. 27-28; J.L.62, 64). In a decision issued December 17, 1981, Commission Chairman Reese Taylor denied the Shippers Group's petition for a stay of the abandonment certificate pending appeal stating: "[C&NW] is operating a marginal line and is incurring a substantial opportunity cost and a grant of this stay would cause [it] to continue to incur this cost." (J.A. 33; J.L. 80).

Contrary to both the expressed concern of the Commission and federal law (28 U.S.C. §2321), however, the state court impermissibly prevented C&NW from removing its track and appurtenances and selling its right of way on the Hayfield segment, and directly caused C&NW to continue to incur the very opportunity costs the Commission's abandonment orders were designed to eliminate. The sole method for attacking or enjoining a final order of the Commission is by appeal to the appropriate federal court of appeals, pursuant to 28 U.S.C. §2321(a). Persons who seek to avoid the federal requirements applicable to

continued rail service when acquiring lines, as set forth in Section 10905(f)(4), or who do not agree with the Commission's determination of value or its authorization of abandonment but who do not appeal such determinations, cannot be allowed to proceed under the diverse jurisdictions of the 50 states to countermand the Commission's final orders.

Hayfield Northern bases its litigation on its purported power of eminent domain to acquire C&NW's track and right of way. However, the indisputable and ultimate effect of its litigation is to jeopardize the very benefits to C&NW and to interstate commerce that the Commission acknowledges would flow from the abandonment. This contemplated state condemnation action would require the carrier to relitigate the question of value in a state court when Congress has provided an expedited method (Section 10905) to determine purchase price and where the Commission has already determined the value of the line.

The state court injunction preventing C&NW from removing its track and appurtenances and selling its right of way on the subject line and Hayfield Northern's contemplated condemnation action unmistakably constitute collateral attacks on the Commission's unappealed decisions and orders in this case.

III.

THE LEGISLATIVE HISTORY AND STRUCTURE OF THE STAGGERS RAIL ACT DO NOT SUPPORT APPELLANTS' CONSTRUCTION OF SECTION 10905.

The Appellants argue that the provisions of Section 10905 do not provide the exclusive means for acquiring a rail line and do not displace a state's post-abandonment

condemnation authority (e.g., forced sales via state condemnation). The court of appeals correctly concluded to the contrary, that so called "post-abandonment acquisition" would stand as an obstacle to the accomplishment of Congress' purposes in enacting Section 10905, and was thus preempted. (J.S. App. A5).

The court of appeals recognized that the Staggers Rail Act was in part a congressional response to protracted administrative and legal proceedings which delayed carrier abandonments and delayed carriers' reuse of assets from abandoned lines. (J.S. App. A6-A7). Under Section 10905, any arrangements for continued rail service must be completed within 110 days. The Government argues the sole purpose of Section 10905 is to diminish delay in the issuance of the abandonment certificate. Brief at 18. This attempt to reconcile state condemnation with Section 10905 is overly-simplistic and ignores the purposes and federal interests underlying the enactment of Section 10905. While expedited abandonment decisions were one purpose of the provisions of Section 10905, the restricted time schedule would also expedite the determination of whether a line authorized for abandonment would be acquired or subsidized.[38] If not acquired or subsidized under the Commission's auspices, the carrier could rely on the administrative finality of the Commission's decisions to plan for the productive reuse of its assets elsewhere in its system.

The legislative history of the Staggers Rail Act supports

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[38]See *Railroad Transportation Policy Act of 1979: Hearings on S. 1946 Before the Senate Comm. on Commerce, Science and Transportation*, 96th Cong., 1st Sess. 41 (1979) ("[I]t should be stressed that the intent of this legislation is to simplify and speed up the *subsidy process* and that the Commission not permit the existence of multiple offers to unduly or unfairly delay the process.") (Emphasis added.)

this interpretation. Senator Cochran proposed an amendment to the abandonment provisions in the Senate Committee's bill that ultimately was enacted into law as the Staggers Rail Act. The Cochran amendment sought to eliminate the stringent time limits in the abandonment provisions. Senator Cochran explained that:

> [E]xisting law gives opportunities which are sufficient . . . to these interests to make their case—not only to make their case before the Interstate Commerce Commission, but a sufficient period of time to determine whether or not they want to try to get another rail company or another business entity to obtain the line and equipment that is being abandoned or to explore alternative modes of transportation that may be available . . .
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> * * *
>
> Under the Committee Bill, however, . . . this period of time during which they may contest, assess the economic impact, explore alternative means of transportation, try to see whether or not the state or local governmental entities can provide assistance is shortened to 9 months.

126 Cong. Rec. 7283 (1980).

In opposition to Senator Cochran's amendment, Senator Cannon stated:

> These procedural reforms will benefit everyone—for neither the communities involved nor the railroads benefit from protracted litigation. . .

Ibid. at 7285.

Following this debate, the Cochran amendment was defeated (*Id.* at 7286). Clearly, the abandonment time schedule of the Staggers Rail Act was not only designed to

reduce the delay in the issuance of Commission abandonment certificates, but was also the result of a balancing of interests to provide adequate time for any arrangements for continued rail service and, at the same time, more quickly free the carriers to be able to reuse their assets more productively." Any alteration of this congressionally prescribed timetable would ruin the balance of interests crafted by Congress in enacting Section 10905.

The Government necessarily suggests that once the abandonment certificate is issued and a carrier ceases service, state condemnation would not interfere with the accomplishment of Congress' purposes in enacting Section 10905. This attempt to reconcile state condemnation with Section 10905 disregards not only the purposes and federal interests involved in the enactment of Section 10905, but also the express purposes and interests underlying the Commission's findings authorizing C&NW's abandonment of the Hayfield segment."

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[27]See *Hearings Before the Senate Subcomm. on Surface Transportation of the Comm. on Commerce, Science and Transportation*, 95th Cong., 2d Sess. 71-72 (1978) ("The ability of the railroads to eliminate, in a more timely fashion, unnecessary branch line operations will facilitate the modernization of the essential parts of the rail plant. When the railroads abandon an unnecessary line, they not only stop the drain on their resources, but also strengthen the remaining parts of their systems by applying the reuseable ties and rail to the needed parts of their plant. This strengthening of the needed rail plant obviously permits safer operations.") (Statement of William H. Dempsey).

[28]See J.L.21 ("[C&NW] is in marginal financial condition . . ."; "[C]ontinued operation of the [Hayfield segment] will impose a burden on [C&NW] and on interstate commerce . . ."; "[C&NW] has shown . . . there is need elsewhere in its system for reuseable track and other materials in the Line or that these assets may be liquidated to provide needed cash to [C&NW]"); J.L.62 ("[T]he ALJ's 120-day public use condition] will be amended to permit the removal of rail and ties"); J.A.33, J.L.80 ("[C&NW] is operating a marginal line and is incurring a substantial opportunity cost and a grant of [a] stay [delaying the effective date of the abandonment certificate] would cause [C&NW] to continue to incur this cost.")

The Commission and the courts have explicitly recognized that burdens on interstate commerce arise not only from losses sustained by carriers operating unprofitable lines, but also from the dedication of rail assets to unprofitable uses which could be used profitably elsewhere. Ex Parte 274 (Sub-No. 3), *Abandonment of Railroad Lines-Use of Opportunity Costs*, 360 I.C.C. 571 (1979). See also *Missouri Pac. R.R. Co. v. United States and Interstate Commerce Commission*, 625 F.2d 178 (8th Cir. 1980); *State of Maine, Dep't of Transp. v. Interstate Commerce Commission, supra; In re Boston and Maine Corp., supra.*

While the issuance of an abandonment certificate may end a carrier's operating losses, the carrier would still be unable to plan for and productively reuse its track materials elsewhere if the carrier was subjected to protracted state condemnation actions. The so-called "post-abandonment acquisition" procedures in this context stand as an obstacle to the accomplishment of Congress' intent to permit carriers to abandon unprofitable lines and reuse productive and profitable rail assets elsewhere.

The Government concedes that "state law would be preempted to the extent that it actually interfered with a certificate of abandonment issued by the Commission" (Brief at 29, n. 23), for example, where the Commission authorized an abandonment on the ground that relocation of the track was essential to enable the carrier to provide adequate interstate service elsewhere. *Id.* Yet the very issue of whether a carrier's under-utilized assets should be allowed to be reused more productively elsewhere is one of the central issues addressed in all abandonment cases, including the abandonment of the subject

line. See Ex Parte 274 (Sub-No. 3), *Abandonment of Railroad Lines-Use of Opportunity Costs*, 360 I.C.C. 571 (1979); J.L.21.

The Shippers Group's substantive appeal of the Commission's abandonment decision in this case involved the issue of whether opportunity costs should be considered by the Commission (J.L. 46). The Commission determined on appeal that indeed opportunity costs were to be considered in determining the burden on interstate commerce imposed by the subject line (J.L. 57-58). When the Shippers Group (Hayfield Northern) petitioned the Commission to stay the effectiveness of the abandonment pending judicial appeal, Commission Chairman Taylor denied the petition, stating "[C&NW] is incurring a substantial opportunity cost and a grant of this stay would cause [C&NW] to continue to incur this cost" (J.A. 33; J.L. 80). The Commission has found "when reusable rail assets are tied up on a line where they are barely used, there is a burden on interstate commerce." *Texas & Pac. Ry. Co. Abandonment*, 363 I.C.C. 666, 676 (1980). Therefore, even though the abandonment certificate was issued for the Hayfield segment, the burden on commerce continued so long as C&NW was forcibly prevented from recovering and reusing its assets.

Appellants continue to recite the argument unsuccessfully advanced before the courts below, namely, that preemption has not occurred as the jurisdiction of the Commission ends with the issuance of an abandonment certificate. Appellants' Brief at 22-23. This argument was fully considered and rejected by the court of appeals. (J.S. App. A10-A11). The issue involved is not one of Commission *jurisdiction*, but whether Minnesota condemnation

authority would frustrate the accomplishment of Congress' *objectives* in enacting Section 10905. *(Ibid.)*. There is simply no question that Congress' intent to protect carriers from "protracted legal proceedings" and to permit carriers to expeditiously abandon unprofitable lines to facilitate the reuse of rail assets elsewhere would be undermined by Appellants' proffered construction of Section 10905.

The court of appeals noted Section 10905 also demonstrates Congress' concern with the orderly operation of rail lines after their transfer under Section 10905(f). (J.S. App. A6-A7). The Appellants completely disregard this provision of Section 10905 and the legislative purpose it represents.

Under the Appellants' abandonment scenario, a party could avoid the two year service commitment under Section 10905(f)(4) by merely waiting until after the abandonment certificate is issued to acquire the rail line for continued rail use by condemnation. Clearly, the availability of such a "post-abandonment acquisition" procedure decimates the effectiveness of Section 10905 in providing for the orderly transfer and operation of rail lines following abandonment authorization.

The Government incorrectly asserts that state condemnation would not circumvent the Commission's determination of value of the Hayfield segment. Brief at 25-26. The Government's brief states that an offeror of financial assistance who invokes the Commission's jurisdiction to establish conditions and compensation, pursuant to Section 10905(f)(1), and who later withdraws the offer, pursuant to Section 10905(f)(2), is thereupon free to resort to state condemnation authority to acquire the rail line. Brief at 18. This untenable interpretation of Section 10905 would serve

only to invite the "protracted legal proceedings" which Section 10905 was clearly designed to avoid. The Government thus endorses the price-shopping method utilized by Hayfield Northern in this case.

This interpretation is also unwarranted by virtue of the structure of Section 10905. Upon the withdrawal of an offer of financial assistance, any other offeror may purchase or subsidize the rail line, but only if such a subsequent offeror accepts the conditions and amount of compensation established by the Commission in connection with the original offer. See 49 U.S.C. §10905(f) (3).

By withdrawing an offer of financial assistance, the original offeror is not liable to compensate the carrier for the amount determined by the Commission; however, the parties continue to be bound by the Commission's valuation unless it is appealed and reversed by the appropriate court of appeals. Ex Parte 274 (Sub-No. 6), *Abandonment of Railroad Lines and Discontinuance of Service*, 365 I.C.C. 249, 261 (1981).

Section 10905(f)(1) provides for the Interstate Commerce Commission to determine the value of a railroad line in connection with abandonments. The Commission's jurisdiction under Section 10905(f) was invoked by the incorporators and principals of Hayfield Northern. The Commission determined, in an unappealed order, that the net liquidation value of the 19.2-mile segment of line was in excess of $1.7 million. (Mot. to Aff. App. A32). Where Congress has given the Commission authority to determine value and where the Commission has in fact determined that value, it is imprudent as a matter of policy to require a carrier to re-litigate the question of value in a state court.

The court of appeals' construction of Section 10905

cannot be read as an affront to a state's ability or effort to preserve rail service." Such a portrayal as proffered by the Appellants and amici curiae endeavor to inappropriately extend the holdings of the decisions of the courts below in an effort to enhance the substantiality of the narrow question presented by this appeal. Moreover, this Court need not address the peculiarities of the individual states' laws which differ substantially from the purported condemnation power of Hayfield Northern to acquire C&NW's track and right of way for continued rail purposes.

In the instant case, the Shippers Group, after having invoked the procedures of Section 10905 to have the Commission determine a "binding" valuation of the subject line, chose to withdraw its offer of financial assistance and to not appeal the Commission's determination of value. Instead, in the form of Hayfield Northern, it obtained from the state court an injunction to prevent C&NW from removing its track and appurtenances and selling its real estate because it allegedly sought to condemn the property at some indefinite time in the future. It never did. The court of appeal's decision cannot be considered a death knell on the states' ability to preserve local rail service for their own public purposes,[30] when the state itself did not invoke Minnesota's eminent domain statute in this case.

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[29]This action involves the attempt of a hastily-formed Minnesota railroad company to exercise condemnation powers granted to railroad corporations by Minn. Stat. §222.27 (1982) to acquire C&NW's intact rail line and right of way. This action does not involve an effort by the State of Minnesota to acquire rail line and right of way for future public use as a part of the state rail bank program (see Minn. Stat. §222.63 (1982)), nor an effort of a political subdivision or local government unit to preserve and improve local rail service (see Minn. Stat. §§398A.01-.09 (1982)).

[30]Appellee does not suggest the states can avoid Section 10905 procedures to acquire intact rail lines following abandonment by resorting to their eminent domain statutes. However, this issue is not one properly before this Court.

Appellants attempt to buttress their argument by relying on non-authoritative opinions of the Commission and the courts. This Court has consistently held that a court is not bound by an agency's misconstruction of a statute, but instead should construe the statute itself. See *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Comm.*, 390 U.S. 261, 272 (1968) "[T]he courts are the final authorities on issues of statutory construction, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 385, and 'are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the Congressional policy underlying a statute.' *NLRB v. Brown*, 380 U.S. 278, 291."

In *Chicago & N.W. Transp. Co.—Abandonment—in Waukesha, Jefferson and Dane Counties, Wisc.*, I.C.C. Docket No. AB-1 (Sub-No. 144) (May 5, 1983), the Commission stated "after all conditions to an abandonment have been complied with and the certificate is effective, federal interest and Commission jurisdiction end." (Emphasis deleted). (Appellants' App. to Joint Supplemental Memorandum, at A5). This dictum conflicts, however, with the prior recognition of the Commission and courts that burdens on interstate commerce arise not only from losses sustained by carriers operating unprofitable lines, but also from the dedication of rail assets to unprofitable uses which could be used profitably elsewhere. See Ex Parte 274 (Sub-No. 3), *Abandonment of Railroad Lines-Use of Opportunity Costs*, 360 I.C.C. 571 (1979)."[31]

[31]The Commission has held that "the judicious consideration of opportunity costs as one of the factors in abandonment cases will enable us to fulfill better our statutory duty to ensure the development, coordination, and preservation of a transportation system that meets the needs of the United States." *Abandonment of Railroad Lines—Use of Opportunity Costs, supra*, 360 I.C.C. at 578. Accord, *Missouri Pac. R.R. Co. v. United States and Interstate Commerce Commission*, 625 F.2d 178 (8th Cir. 1980).

This position also conflicts with prior Commission decisions wherein it acknowledged its status as a quasi-condemnation tribunal as a result of Section 10905. See *Chicago & N.W. Transp. Co.—Abandonment—Between Clintonville and Eland, Wisc.*, AB-1 (Sub-No. 104), 363 I.C.C. 975, 977 (1981).

Appellants also quote the rulemaking proceedings in Ex Parte 274 (Sub-No. 6), *Abandonment of Railroad Lines and Discontinuance of Service*, 365 I.C.C. 249, 260-261 (1981), in an effort to buttress the untenable proposition that preemption has not occurred. Brief at 24. Appellants refer to comments submitted by the Association of American Railroads (hereinafter "AAR") which requested clarification of the Commission's proposed rules regarding abandonments and offers of financial assistance. Brief at 24-25. The Commission declined the AAR's proposal to require a forfeitable bond from states offering to subsidize or purchase lines. The AAR comment is nothing more than an expression of concern; it is certainly not a substantive precedent for Appellants.

Appellants resort to dicta from two courts of appeals decisions in an effort to gain support for the position that preemption has not occurred. In *Chicago & N.W. Transp. Co. v. United States*, 678 F.2d 665, 667 (7th Cir. 1982), Judge Posner suggested that post-abandonment eminent domain may have been possible in pre-Staggers Rail Act actions. The court did not undertake an analysis of whether post-abandonment condemnation was possible after enactment of the Staggers Rail Act, since the issue before the court was the determination and interpretation of fair market value under Section 10905, and not the limitations of condemnation authority. *Id.* at 666.

Similarly, in *Simmons v. Interstate Commerce Commission*, 697 F.2d 326 (D.C. Cir. 1982), the court concluded only that the Commission had authority, under 49 U.S.C. §10505(a), to exempt states from labor protection provisions of the Interstate Commerce Act and to create a modified certificate program to allow states to start up and terminate rail service. 697 F.2d at 328.[32]

Hayfield Northern's action under Minnesota condemnation procedures seeks to avoid the clear federal mandate and the congressionally-determined scheme of continuation of rail service in connection with abandonments of rail lines. The inescapable conclusion is that Minnesota condemnation law,[33] for purposes of condemning an intact rail line and right of way in order to continue rail service on that line, has been preempted by Section 10905 of the Staggers Rail Act.

CONCLUSION

Minnesota state law authorizing Hayfield Northern to condemn C&NW's abandoned railroad track and right of way stands as an obstacle to the full purposes and objec-

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[32]Appellants also cite *Modern Handcraft, Inc.—Abandonment in Jackson County, Mo.*, 363 I.C.C. 969, 972 (1981), as suggesting that state condemnation actions are a proper means to acquire rail property to continue rail service. Appellants thus confuse Section 10905, the *rail continuation* provision, with Section 10906, the *public purpose* provision. The court of appeals correctly noted that *Modern Handcraft* involved solely the possibility of state condemnation of an abandoned rail line for *non-rail public purposes*, not for continued rail service. (J.S. App. A9.) The acquisition of rail property for public purposes is governed by 49 U.S.C. §10906 and does not apply to the acquisition of rail property in order to continue rail service. (J.S. App. A9, citing *Chicago & N.W. Transp. Co.—Abandonment—Between Clintonville and Eland, Wisc.*, 363 I.C.C. 975, 976 (1981)). Whether condemnation for non-rail public purposes would also be preempted by the Staggers Rail Act was not before the court of appeals. (J.S. App. A9.)

[33]Minn. Stat. §222.27 (1982); Minn. Stat. §300.04 (1982).

tives of Congress in enacting 49 U.S.C. §10905, and is thus preempted. Hayfield Northern's use of a state court injunction to prevent C&NW's removal of its assets and the attempt to acquire the subject track and right of way by state condemnation procedures constitute impermissible collateral attacks on the Commission's orders and decisions. Therefore, the judgment of the court of appeals, which affirmed the district court's order granting summary judgment in favor of C&NW and dismissing Hayfield Northern's complaint, should be affirmed.

Respectfully submitted,

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